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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,433	06/12/2001	Robert J. Crowley	BSC-009DV	4101

21323 7590 10/15/2002

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/15/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.



APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on August 19, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 14-39 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 14-39 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 3739

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14, and 22-25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clarke.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14-18, 21, 27, 28, 37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke in combination with Selman et al. Clarke teaches a method as claimed except for the use on the esophagus, throat, intestine, colon, bladder, using a dye or drug, redirecting the light, and filtering the light. Selman et al teach the method as claimed except the use of a flash lamp per se. It would have been obvious to employ the light source of Clarke in the method of Selman et al, since Selman et al teach that any of a variety of light sources can be used, alternatively it would have been obvious to employ the method of Clarke in the various organs claimed and with the various filtering, dying, and redirecting steps, since these help enhance the effectiveness of the method and help identify tissue to be treated, as taught by Selman et al, thus producing a method such as claimed.

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5. Claims 14, 19, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke in combination with Anderson et al. Clarke teaches a method such as claimed except performing the method on the uterus. Anderson et al teach the desirability of using light to ablate the endometrium, but does not teach the use of a flashlamp, per se. It would have been obvious to the artisan of ordinary skill to employ the method of Clark to ablate the endometrium, since this is one of the tissues that responds to light ablation, as taught by Anderson et al , alternatively it would have been obvious to the artisan of ordinary skill to employ a flahlamp as the light source in the method of Anderson et al, since these are equivalent to lasers, as taught by Clarke thus producing a method such as claimed.

6. Claims 14, 20, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke in combination with Roth et al. Clarke teaches a method as claimed except for ablating the endothelial lining of the urethra and surrounding the light device in a balloon. Roth et al teach a method such as claimed except for using a flash lamp. It would have been obvious to the artisan of ordinary skill to employ the method of Clarke on the urethral endothelium, since this enables treatment of BPH and to employ a balloon on the light device, since this enables the radiation to penetrate further, both of which are taught by Roth et al or, alternatively to employ a flash lamp in the method of Roth et al , since these are equivalent to lasers, as taught by Clarke, thus producing a method such as claimed.

7. Claims 14 and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke in combination with Spears. Clarke, teaches a method such as claimed

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except for the balloon; heat exchange fluid; a lenticular element; and transporting a dye to the tissue. Spears teaches a method such as claimed except the use of a lenticular element and a flashlamp per se. It would have been obvious to the artisan of ordinary skill to employ a flashlamp in the method of Spears, since these are equivalents as taught by Clarke or alternatively, to employ balloon, fluid, dispersing fiber, and dye in the method of Clarke, since this will also prevent restenosis, and in either case to employ a lenticular element to perform the light dispersing function in the method of Spears, since Spears teaches no particular pattern to do so, thus producing a method such as claimed.

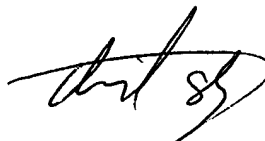
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Shay whose telephone number is (703) 308-2215. The examiner can normally be reached Tuesday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached at (703) 308-0994.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

David Shay:bhw
October 11, 2002

October 10, 2002



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330